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HOUSE BILL 855

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

BEN LUJAN

AN ACT

RELATING TO STATE HIGHWAY BONDS; AUTHORIZING THE GOVERNOR TO IMPOSE A HIGHWAY BONDING GASOLINE TAX UNDER CERTAIN CONDITIONS; REQUIRING ISSUANCE OF ADDITIONAL STATE HIGHWAY BONDS AND INCREASING THE AMOUNT OF STATE HIGHWAY BONDS THAT MAY BE ISSUED BY THE STATE HIGHWAY COMMISSION; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-1-6.7 NMSA 1978 (being Laws 1994, Chapter 5, Section 2, as amended by Laws 1995, Chapter 6, Section 1 and also by Laws 1995, Chapter 36, Section 1) is amended to read:

"7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND. --

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal

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1 to three and fifty-nine hundredths percent of the gross receipts
2 attributable to the sale of fuel specially prepared and sold for
3 use in turboprop or jet-type engines as determined by the
4 department.

5 B. A distribution pursuant to Section 7-1-6.1 NMSA
6 1978 shall be made to the state aviation fund in an amount equal
7 to twenty-six hundredths of one percent of [~~gasoline taxes~~] the
8 gasoline tax, exclusive of penalties and interest, collected
9 pursuant to the Gasoline Tax Act."

10 Section 2. Section 7-1-6.9 NMSA 1978 (being Laws 1991,
11 Chapter 9, Section 11, as amended) is amended to read:

12 "7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO MUNICIPALITIES
13 AND COUNTIES. --

14 A. A distribution pursuant to Section 7-1-6.1 NMSA
15 1978 shall be made in an amount equal to ten and thirty-eight
16 hundredths percent of the net receipts attributable to the
17 [~~taxes~~] gasoline tax, exclusive of penalties and interest,
18 imposed by the Gasoline Tax Act.

19 B. The amount determined in Subsection A of this
20 section shall be distributed as follows:

21 (1) ninety percent of the amount shall be paid
22 to the treasurers of municipalities and H class counties in the
23 proportion that the taxable motor fuel sales in each of the
24 municipalities and H class counties bears to the aggregate
25 taxable motor fuel sales in all of these municipalities and H

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1 class counties; and

2 (2) ten percent of the amount shall be paid to
3 the treasurers of the counties, including H class counties, in
4 the proportion that the taxable motor fuel sales outside of
5 incorporated municipalities in each of the counties bears to the
6 aggregate taxable motor fuel sales outside of incorporated
7 municipalities in all of the counties.

8 C. This distribution shall be paid into the
9 municipal treasury or county general fund for general purposes
10 or for any special purposes designated by the governing body of
11 the municipality or county. Any municipality or H class county
12 that has created or that creates a "street improvement fund" to
13 which gasoline tax revenues or distributions are irrevocably
14 pledged under Sections 3-34-1 through 3-34-4 NMSA 1978 or that
15 has pledged all or a portion of gasoline tax revenues or
16 distributions to the payment of bonds shall receive its
17 proportion of the distribution of revenues under this section
18 impressed with and subject to these pledges. "

19 Section 3. Section 7-13-3.1 NMSA 1978 (being Laws 1979,
20 Chapter 166, Section 7, as amended) is amended to read:

21 "7-13-3.1. GASOLINE INVENTORY TAX--IMPOSITION OF TAX--DATE
22 PAYMENT OF TAX DUE. --

23 A. A gasoline inventory tax is imposed measured by
24 the quantity of gallons of gasoline in the possession of a
25 distributor or wholesaler on the day in which an increase in the

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1 excise tax imposed by Section 7-13-3 NMSA 1978 or the initial
2 imposition or increase in the excise tax imposed by Section
3 7-13-3.5 NMSA 1978 is effective. The taxable event is the
4 existence of an inventory in the possession of a distributor or
5 wholesaler on the day prior to the day in which an increase in
6 the excise tax imposed by Section 7-13-3 NMSA 1978 or the
7 initial imposition or increase in the excise tax imposed by
8 Section 7-13-3.5 NMSA 1978 is effective. The rate of the
9 gasoline inventory tax to apply on each gallon of gasoline held
10 in inventory by a distributor or wholesaler, as provided in
11 Section 7-13-3.2 NMSA 1978, shall be the difference between the
12 gasoline [~~excise~~] tax rate or the highway bonding gasoline tax
13 rate, whichever is applicable, imposed on the day prior to the
14 day [~~in~~] on which the [~~gasoline-excise~~] applicable tax is
15 increased or initially imposed subtracted from the [~~gasoline~~
16 ~~excise~~] applicable tax rate imposed on the day that the
17 [~~gasoline-excise~~] applicable tax rate increase or imposition is
18 effective, expressed in cents per gallon.

19 B. The gasoline inventory tax is to be paid to the
20 department on or before the twenty-fifth day of the month
21 following the month in which the taxable event occurs. "

22 Section 4. Section 7-13-3.2 NMSA 1978 (being Laws 1979,
23 Chapter 166, Section 8, as amended) is amended to read:

24 "7-13-3.2. GASOLINE INVENTORIES. --

25 A. On the day prior to the day that the excise tax

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1 imposed by Section 7-13-3 NMSA 1978 is increased or the excise
2 tax imposed by Section 7-13-3.5 NMSA 1978 is initially imposed
3 or increased, each distributor, wholesaler and retailer shall
4 take inventory of the gallons of gasoline on hand.

5 B. Distributors and wholesalers shall report total
6 gallons of gasoline in inventory on the day prior to the day
7 that an increase in the gasoline tax rate is effective and pay
8 any tax due imposed by Section 7-13-3.1 NMSA 1978.

9 C. Retailers shall maintain a record of the total
10 gallons of gasoline in inventory on the day prior to the day
11 that an increase in the gasoline tax rate or the initial
12 imposition or an increase in the highway bonding gasoline tax
13 rate is effective and shall not increase the price of the
14 gasoline sold until the inventory is disposed of in the ordinary
15 course of business. "

16 Section 5. A new section of the Gasoline Tax Act, Section
17 7-13-3.5 NMSA 1978, is enacted to read:

18 "7-13-3.5. [NEW MATERIAL] IMPOSITION AND RATE OF HIGHWAY
19 BONDING GASOLINE TAX--LIMITATION. --

20 A. The governor is authorized, subject to the
21 limitations of this section, to impose for the privilege of
22 receiving gasoline in this state an excise tax at a rate not to
23 exceed two cents (\$.02) per gallon of gasoline received in New
24 Mexico. The tax may be imposed in one-cent (\$.01) increments
25 and may be referred to as the "highway bonding gasoline tax".

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1 The proceeds from the tax shall be used only to secure or pay
2 state highway bonds issued pursuant to Subsection C of Section
3 67-3-59.1 NMSA 1978.

4 B. The governor may impose any increment of the tax
5 authorized by Subsection A of this section only upon a finding
6 that the tax increase is necessary because there are
7 insufficient revenues available in the state road fund to pledge
8 for the issuance of the amounts of state highway bonds that:

9 (1) are authorized pursuant to Subsection C of
10 Section 67-3-59.1 NMSA 1978; and

11 (2) are needed to fund statewide road
12 improvements that the state highway commission certifies are
13 necessary for purposes of safety, commerce and economic
14 development.

15 C. The tax authorized to be imposed pursuant to this
16 section shall become effective only upon July 1 or January 1,
17 whichever date occurs first, after the expiration of at least
18 three months from the date the governor issues the finding
19 pursuant to Subsection B of this section. "

20 Section 6. Section 7-13-5 NMSA 1978 (being Laws 1971,
21 Chapter 207, Section 5, as amended) is amended to read:

22 "7-13-5. TAX RETURNS--PAYMENT OF TAX.--Distributors shall
23 file gasoline tax and highway bonding gasoline tax returns in
24 form and content as prescribed by the secretary on or before the
25 twenty-fifth day of the month following the month in which

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1 gasoline is received in New Mexico. Such returns shall be
2 accompanied by payment of the amount of gasoline tax or highway
3 bonding gasoline tax due. "

4 Section 7. Section 7-13-13 NMSA 1978 (being Laws 1971,
5 Chapter 207, Section 12, as amended) is amended to read:

6 "7-13-13. PERMIT TO PURCHASE DYED GASOLINE AND APPLY FOR
7 REFUND OF GASOLINE TAX AND HIGHWAY BONDING GASOLINE TAX ON
8 GASOLINE NOT USED IN MOTOR BOATS OR IN MOTOR VEHICLES OPERATED
9 ON HIGHWAYS OF THIS STATE. --

10 A. Each person who wishes to purchase gasoline dyed
11 in accordance with the provisions of Section 7-13-15 NMSA 1978
12 and to claim a refund of gasoline tax and highway bonding
13 gasoline tax paid on such gasoline under the provisions of
14 Section 7-13-14 NMSA 1978 shall apply for and obtain a permit to
15 do so from the department. The application for the permit shall
16 be in form and content as prescribed by the department.

17 B. The secretary may, upon notice and after hearing,
18 suspend the gasoline tax and highway bonding gasoline tax refund
19 permit of any person who makes any false statement on an
20 application for a permit or on a claim for refund made under
21 Section 7-13-14 NMSA 1978 who uses gasoline dyed in accordance
22 with Section 7-13-15 NMSA 1978 in a motor boat or in a vehicle
23 licensed to operate on the highways of this state or who
24 violates any other provision of the Gasoline Tax Act. Such
25 suspension may be, ~~in~~ at the discretion of the secretary, for

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1 a period of up to one year. "

2 Section 8. Section 7-13-14 NMSA 1978 (being Laws 1971,
3 Chapter 207, Section 13, as amended) is amended to read:

4 "7-13-14. CLAIM FOR REFUND OF GASOLINE TAX AND HIGHWAY
5 BONDING GASOLINE TAX PAID ON GASOLINE NOT USED IN MOTOR BOATS OR
6 IN MOTOR VEHICLES LICENSED TO OPERATE ON HIGHWAYS OF THIS
7 STATE. -- Upon submission of proof satisfactory to the department,
8 the department shall allow a claim for refund of gasoline tax
9 and highway bonding gasoline tax paid on dyed gasoline purchased
10 and used within six months prior to the filing of the claim by
11 holders of permits issued under Section 7-13-13 NMSA 1978. The
12 individual purchases of such gasoline, other than that to be
13 used as aviation fuel, must have been made in quantities of
14 fifty gallons or more. Purchasers of aviation fuel may
15 accumulate invoices to reach the minimum required for filing a
16 claim for refund. No claim for refund may be presented on less
17 than one hundred gallons so purchased. The secretary may, by
18 regulation, prescribe the documents necessary to support a claim
19 for refund and the invoice and sales procedure to be followed by
20 sellers and purchasers of gasoline not intended to be used in
21 motor boats or in motor vehicles licensed to operate on the
22 highways of this state by the motor vehicle division of the
23 department. "

24 Section 9. Section 67-3-59.1 NMSA 1978 (being Laws 1989,
25 Chapter 157, Section 1, as amended) is amended to read:

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1 "67-3-59. 1. STATE HIGHWAY DEBENTURES--ISSUANCE--LIMITS--
2 APPROVAL--COUPONS.--

3 A. In order to provide funds to finance state
4 highway projects, including state highway projects that are
5 required for the waste isolation pilot project and are eligible
6 for federal reimbursement or payment as authorized by federal
7 legislation, the state highway commission is authorized to issue
8 bonds from time to time, payable from [~~the proceeds of the~~
9 ~~collection of gasoline excise taxes and motor vehicle~~
10 ~~registration~~] federal funds not otherwise obligated that are
11 paid into the state road fund and from the proceeds from the
12 collection of taxes and fees that are required by law to be paid
13 into the state road fund and not otherwise pledged solely to the
14 payment of outstanding bonds and debentures.

15 B. Except as provided in Subsection C of this
16 section, the total aggregate outstanding principal amount of
17 bonds issued from time to time pursuant to this section, secured
18 by or payable from [~~the gasoline excise taxes and motor vehicle~~
19 ~~registration fees~~] federal funds not otherwise obligated that
20 are paid into the state road fund and the proceeds from the
21 collection of taxes and fees required by law to be paid into the
22 state road fund, shall not, without additional authorization of
23 the state legislature, exceed one hundred fifty million dollars
24 (\$150,000,000) at any given time, subject to the following
25 provisions:

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1 (1) the total aggregate outstanding principal
2 amount of bonds issued for state highway projects that are
3 required for the waste isolation pilot project and are eligible
4 for federal reimbursement as authorized by federal legislation
5 shall not exceed one hundred million dollars (\$100,000,000); and

6 (2) the total aggregate outstanding principal
7 amount of bonds issued for state highway projects other than
8 state highway projects that are required for the waste isolation
9 pilot project and are eligible for federal reimbursement as
10 authorized by federal legislation shall not exceed fifty million
11 dollars (\$50,000,000).

12 C. An amount shall be added to the total aggregate
13 outstanding principal amount of bonds authorized for issuance by
14 the state highway commission for state highway projects secured
15 by or payable from federal funds not otherwise obligated and
16 proceeds from the collection of taxes and fees required by law
17 to be paid into the state road fund, and from this additional
18 authorization, the state highway commission may issue the amount
19 of bonds that the commission, subject to the provisions of this
20 section, determines can be serviced with an amount approximately
21 equal to the net receipts attributable to four cents (\$.04) of
22 the gasoline tax distributed by law into the state road fund and
23 any other receipts distributed by law into the state road fund,
24 other than gasoline tax receipts in excess of the amount of net
25 receipts attributable to four cents (\$.04) of the gasoline tax.

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1 ~~[C.]~~ D. The state highway commission may issue bonds
2 to refund other bonds issued pursuant to this section by
3 exchange or current or advance refunding.

4 ~~[D.]~~ E. Each series of bonds shall have a maturity
5 of no more than twenty-five years from the date of issuance,
6 provided that bonds issued pursuant to Subsection C of this
7 section shall have a maturity of no more than ten years from the
8 date of issuance. The state highway commission shall determine
9 all other terms, covenants and conditions of the bonds; provided
10 that the bonds shall not be issued pursuant to this section
11 unless the state board of finance approves the issuance of the
12 bonds and the principal amount of and interest rate or maximum
13 net effective interest rate on the bonds.

14 ~~[E.]~~ F. The bonds shall be executed with the manual
15 or facsimile signatures of the chairman of the state highway
16 commission, countersigned by the state treasurer and attested to
17 by the secretary of the state highway commission, with the seal
18 of the state highway commission imprinted or otherwise affixed
19 to the bonds.

20 ~~[F.]~~ G. Proceeds of the bonds may be used to pay
21 expenses incurred in the preparation, issuance and sale of the
22 bonds and, together with the earnings on the proceeds of the
23 bonds, may be used to pay rebate, penalty, interest and other
24 obligations relating to the bonds and the proceeds of the bonds
25 under the Internal Revenue Code of 1986, as amended.

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